

Idaho State Department of Agriculture
02.04.14 Rules Governing Dairy Byproduct
June 27, 2018, 1:00 p.m.
Dr. Scott Leibsle, Facilitator

Present: Austin Hopkins, Idaho Conservation League; Amy Johnson, Idaho Department of Lands; Marv Patten, Milk Producers of Idaho; Russ Hendricks, Idaho Farm Bureau Federation; Rick Naerebout, Idaho Dairymen’s Association; W. Dallas Burkhalter, Office of Attorney General – ISDA; Owen Moroney Office of Attorney General – ISDA; Mitch Vermeer, ISDA; Pradip Adhikari, ISDA; Bill Barton, ISDA; Scott Leibsle, ISDA; Janis Perry, ISDA.

AGENDA ITEMS

WELCOME

Dr. Scott Leibsle convened the meeting at 1:03 pm. He explained that this is a public negotiated rulemaking meeting for IDAPA 02.04.14 Rules Governing Dairy Byproduct. The proposed changes were initiated by multiple petitions. A joint petition submitted by Milk Producers of Idaho and the Idaho Farm Bureau seeks to remove the sunset clause that was put into the rule last year with the intent for producers to be able to choose either phosphorus indexing or phosphorus threshold. The other petition, from the Idaho Dairymen’s Association, requests that a margin of error be attached to soil testing in the rule.

After each participant introduced themselves, Dr. Leibsle stated that anything said at today’s meeting would be recorded in the minutes and published in the rulemaking record on the website. He also indicated that written comments on the rule changes would be accepted until August 3, 2018. This would allow for the publication of a proposed rule in the September Bulletin followed by another comment period. A pending rule could be published in the November Bulletin. Dr. Leibsle introduced Dr. Adhikari as the new soil scientist in the Animals Division.

Dr. Leibsle stated that the sunset clause could be removed by striking the following sentence in section .031: “After June 30, 2023, dairy farms will no longer be allowed to use the Phosphorus Threshold (Section 031.02) provision and all facilities will be required to use Phosphorus Indexing (Section 031.01).” This way farmers could choose whether to use phosphorus indexing or phosphorus threshold to manage nutrient application.

Austin Hopkins asked why this rule change was requested. Russ Hendricks, as one of the petitioners, responded that some of the Farm Bureau members are small, are not close to the 40 ppm threshold, and would like to continue with the current measure. Marv Patten, also one of the petitioners, explained that there are safety valves built into existing Idaho rule if any byproduct were to flow off site. Mr. Patten claimed that it is more expensive if a farmer has to change to indexing and both are fairly equal in protection to the environment. He feels that unless there are issues and since it is more economically viable, he prefers to let farmers have choices. Mr. Hopkins responded that he feels phosphorus indexing is more protective, so the Idaho Conservation League favors more use of indexing. He asked about

setting a farm size that would be required to use indexing. Mr. Patten reviewed some history of the rule that was written in 1995 as a collaborative effort. At that time, he said, it was important for all farmers to have the same rules. Mr. Hopkins asked if we could get by if the rule was limited to a specific dairy size. Rick Naerebout stated that 40% of the dairy farmers in Idaho have 500 cows or less. He indicated that the Idaho Dairymen's policy is not to have regulations differentiated by size. With the threshold the soil test is the predominant factor where indexing gives dairymen more flexibility. Mr. Hopkins said from the ICL's perspective the Snake River is not improving in water quality and they would favor other metrics other than just soil tests. Dr. Leibsle stated that from a regulatory perspective having a farm size as part of the rule would be problematic since it would involve inspectors counting cows. He said that indexing shows what the risk is of having run off with all different factors taken into account. If a farm is over the 40 ppm threshold, the options are less. Mr. Naerebout commented that the incentive is to go to indexing since it gives flexibility. Mr. Patten thought that the rule may need clarification in the rule if and when farmers can choose. Dr. Leibsle stated that the department's position would be that a facility would have to choose all of one method, not by each field. Mr. Patten stated that choices would be nice to have. Mr. Naerebout responded that IDA would support all using one method.

Again Mr. Hopkins expressed concern that there may not be an incentive to switch over to indexing if the farm was near a water body. He favors something that triggers a producer to switch to indexing. Dr. Leibsle explained that the risk assessment involves multiple factors. He asked if switching to indexing would be a forced transition if over 40 ppm. Mr. Naerebout stated that if a farm is over 40 ppm the only option is to reduce land application; therefore regulation would cause the farm to switch. Mr. Hopkins stated that he was not convinced that is what is going on since reliance on regulatory enforcement is happening. Mr. Naerebout indicated that the industry wants options and not to be boxed in, but to have flexibility. Mr. Patten commented that with the Snake River water quality, livestock is only one portion of the whole picture. With the growth in the dairy industry, something is working to improve water quality. He mentioned the nitrogen levels and isotope tests.

Dr. Leibsle asked what the petitioners would propose regarding the NRCS 590 standards which is nearly twenty years old. He stated that the department has received criticism for using outdated standards. If the sunset clause is removed this reference now stays relevant. Mr. Patten stated that he was not prepared for MPI to endorse the 2013 edition, however there were portions of the document that would be applicable to Idaho dairy operations. Russ Hendricks said he had not reviewed the document. Dr. Leibsle stated that if there are only portions of the 2013 590 that apply and the 1999 version contains outdated/irrelevant information, then perhaps a new document should be created using the relevant and applicable data from both documents.

Dr. Leibsle explained that the daily phosphorus excretion rate of cows is a significant value in a Nutrient Management Plan. If a producer does not believe the excretion rate that is being utilized by the ISDA NMP program is an accurate assessment of their operation then a producer has the option to establish their own standard through testing of manure streams and ration analysis. Dr. Leibsle stated that it is extremely important for a producer to know how much nutrients are present in the byproduct that is being land applied, because it directly affects the amount of phosphorus that is retained in the soil. Mr. Naerebout stated it is not a perfect planning tool and recommended a margin of error for soil testing. Currently the department uses common sense discretion for the variance, but he would like to see a variance value. Dr. Adhikari explained that soil tests can be quite variable depending on how many

samples are taken as well as other factors. Mr. Hopkins questioned whether you could define a trend using the slope on a trend line. Mr. Naerebout suggested a percentage increase. When asked about enforceability, Dallas Burkhalter asked how the variation could be defined since a minor upward trend case can't meet the "red-faced" test (i.e. embarrassed in front of a judge). Dr. Adhikari indicated that the more samples, the less margin of error. If less than ten acres the margin of error could be up to 20 ppm while if greater than ten acres the margin of error could be up to 15 ppm. Mr. Naerebout suggested the simpler the better. Mr. Patten commented that to establish a trend, better data is needed.

Dr. Leibsle stated that a second meeting seems to be needed so as to give the group time to review the 590 documents and identify relevant and important sections from both that could be included in the new document. He will provide copies of the 1999 and 2013 NRCS 590 before then, so that participants can identify important sections of each to include.

Dr. Leibsle adjourned the meeting at 2:40 pm.

Next meeting: July 11, 2018 at 1:00 pm.

Respectfully submitted by Janis Perry